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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/602,649 | 06/25/2003 | Jesse J. Bahr | 17312 | 1017 |

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CNH AMERICA LLC
INTELLECTUAL PROPERTY LAW DEPARTMENT
PO BOX 1895, MS 641
NEW HOLLAND, PA 17557

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| EXAMINER |
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RESTIFO, JEFFREY J

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| ART UNIT | PAPER NUMBER |
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3618

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/602,649

Applicant(s)

BAHR ET AL.

Examiner

Jeffrey J. Restifo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 June 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Acknowledgments

1. Acknowledgment is made of the amendment filed 4/22/05.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Martenas et al. (US 5,199,522 A) and in further view of Adamson et al. (US 4,341,277 A).

With respect to claims 1, 7, and 13, Martenas et al. discloses an engine hood 3 for a tractor work vehicle 1 with a radiator 11 and engine 13, said hood comprising an outer shell including a top panel 21, with an inner engine facing surface, a vertical front panel (not numbered), vertical left and right side panels 22 with combustion (or cooling) air apertures 29 behind said radiator, and an inner panel 23, as shown in figures 1-4. Martenas et al. does not explicitly disclose additional combustion (or cooling) apertures in the front and/or top panels. Adamson et al. does disclose a tractor hood assembly comprising a top panel 13 with an air combustion aperture 16,17,18, as shown in figures 1-5. It would have been obvious to one having ordinary skill in the art at the time of the invention to have provided the top and/or front panels of Martenas et al. with the

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additional air combustion apertures of Adamson et al. in order to increase the amount of drawn in air for combustion and cooling, as is conventional in the art. Since the tractor is an intended purpose, the fan subject matter has been given little patentable weight.

With respect to claims 2, 8, and 14, Martenas et al. discloses the inner panel and top panel together define a cooling air conduit (or plenum) 19, as shown in figure 4.

With respect to claims 3-5, 9-11, and 15-17, Martenas et al. discloses the inner panel as having side and rear edges 24,26 as abutting the outer shell and having a forward edge as abutting and forming a seal with the radiator for directing air toward the front of the radiator and prevent radiator exhaust from passing to the rear of the radiator, as shown in figures 2 and 3 and recited in column 3, line 68-column 4, line 3.

With respect to claims 6, 12, and 18, the front portion of the inner panel 27 of Martenas et al. has an integral combustion air intake tube that extends over the top of and to the front of the radiator, as shown in figure 2.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Response to Arguments

5. Applicant's arguments filed 4/22/05 have been fully considered but they are not persuasive.

With respect to the applicant's remarks concerning claims 6, 12, and 18, the examiner apologizes for the typo in the action, specifically item 2 not reciting claims 6, 12, and 18, however, these claims were explicitly addressed in the body of the rejection and in the office action summary and if there had been any confusion as to how the claims were intended to be addressed then the applicant should have brought it to the examiner's attention before filing the amendment. Therefore, the applicant's request to refrain from making the action final has been denied.

With respect to the applicant's arguments concerning newly amended claims 1, 7, and 13, specifically the added limitation of "...the fan pulls air from the front of the radiator to the rear of the radiator.", since the fan is recited as being part of the tractor and the tractor is only recited as being an intended purpose for the engine hood, little patentable weight has been given to where or how the fan directs air through the engine hood. Further, the engine hood of Martenas et al. as modified by Adamson et al. is capable of guiding air that has been drawn from in front of a radiator by a fan.

6. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in

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the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Adamson et al. reference was only used as an example of multiple air inlets/outlets on an engine hood, none of the actual flow design was brought into the base reference of Martenas et al. as part of the 103 rejection. The motivation to add extra apertures for the purpose of increasing airflow is considered to be well-known in the art.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey J. Restifo whose telephone number is (571) 272-6697. The examiner can normally be reached on M-F (10:00-6:00), alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P. Ellis can be reached on (571) 272-6914. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



JJR

Jeffrey J. Restifo
Examiner
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